

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition in the performance of duty on August 2, 2017, as alleged.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On August 4, 2017 appellant, then a 48-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 2, 2017 he sustained an emotional condition while in the performance of duty. He did not stop work. OWCP assigned the claim OWCP File No. xxxxxx851, which is currently before the Board.⁴

In an accompanying statement, appellant indicated that, on the morning of August 2, 2017, he informed C.C., his immediate supervisor, that he was not feeling well because of neck pain and numbness to his face. He asserted that C.C. informed him that he still had to deliver mail on street route 19. Appellant then informed two other supervisors that he was not feeling well and was told he could case mail and deliver his mail route later. He reported that, while he was casing mail, C.C. came and stood behind him to observe him work, which made him very uncomfortable, nervous, and stressed. C.C. then asked appellant again to go out and deliver mail on route 19. Appellant indicated that, while he was on his lunch break, C.C. asked to speak to him after lunch, causing him to feel nervous and stressed that he had done something wrong. He asserted that, after lunch, he spoke with C.C. who informed him that he thought that appellant was emotionally unstable. Appellant became upset and angry and raised his voice to his supervisor. He then apologized to C.C. and explained that he did not know why this was happening, but he would try and control himself.

In an August 2, 2017 statement, C.C. reported that, on that morning, appellant was notified that he was making scanner and clock ring errors because he was using an old route number to input the data. He maintained that route 32, appellant's old assignment, had been eliminated a month before and that appellant was incorrectly using the old route number. C.C. reported that, around 12:00 p.m., appellant returned to the employing establishment to take his lunch without completing his mail route delivery. At this time, he spoke to appellant regarding the matter. C.C. indicated that he gave appellant directions to set up the scanner correctly and use the new route number, and also informed appellant that he should not come back to the facility to take his lunch when he still had mail to deliver. Rather, appellant was advised to take his lunch break on his mail route. He then became upset, raised his voice, and began crying. Appellant yelled that he wanted

³ *Order Remanding Case*, Docket No. 19-0482 (issued January 6, 2020).

⁴ The record reflects that appellant also filed a separate occupational disease claim (Form CA-2) on August 17, 2017 for the same issue. That claim was then deleted by OWCP and combined with the instant claim. The record further reflects that appellant filed an additional occupational disease claim (Form CA-2) on April 26, 2018, to which it assigned OWCP File No. xxxxxx062. That claim is not presently before the Board on this appeal.

the same delivery route he was assigned the previous day. C.C. informed appellant that he was not given that assignment because he was not completing his route and brought back about half his assignment the day before. He informed appellant that it was not his decision to eliminate appellant's prior route and that the decision was made between the employing establishment and the union.

In support of his claim, appellant submitted medical reports, commencing in May 2017, from Dr. Michael Hebrard, a Board-certified physiatrist.

In a September 11, 2017 development letter, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant submitted additional medical evidence in support of his claim. In a March 7, 2018 statement, C.C. asserted that he only gave legitimate instructions to appellant on August 2, 2017 as part of his right to supervise appellant.

By decision dated March 27, 2018, OWCP denied appellant's emotional condition claim because he did not establish fact of injury. It found that the evidence of record failed to establish that the August 2, 2017 incident occurred as alleged. OWCP also determined that there was insufficient medical evidence to establish a diagnosed condition causally related to the alleged incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 2, 2018 appellant, through then-counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on September 14, 2018 at which counsel and appellant provided further details regarding the claimed employment factors.

By decision dated November 28, 2018, OWCP's hearing representative affirmed the March 27, 2018 decision, finding that the evidence of record failed to establish that the events of August 2, 2017 occurred as alleged. The hearing representative noted that, even if appellant were to establish that the events occurred as he described, he had not established that an incident rose to the level of error or abuse as he was describing supervisory or administrative actions which were at the discretion of his employer, which would not be compensable.

Appellant appealed to the Board and, by order dated January 6, 2020,⁵ the Board set aside OWCP's November 28, 2018 decision and remanded the case to OWCP for further development. The Board found that OWCP failed to set forth findings of fact and a clear statement of reasons in its denial of his emotional condition claim. The Board determined that OWCP did not make any factual findings regarding appellant's specific allegations with respect to the events of August 2, 2017 or otherwise provide proper findings regarding whether he established any compensable employment factors. The Board directed OWCP to make findings of fact regarding the

⁵ *Supra* note 3.

employment events alleged by him and to issue a *de novo* merit decision regarding his emotional condition claim.

By decision dated April 23, 2020, OWCP denied appellant's emotional condition claim because he did not establish any compensable employment factors. It provided a detailed discussion of the claimed incidents and conditions in the workplace on August 2, 2017, but found that either they had not been factually established or that they would not be considered as occurring in the performance of duty.

On April 29, 2020 appellant, through then-counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted an undated statement in which he indicated that on August 2, 2017 C.C. attempted to rush appellant into driving his postal vehicle on the streets when it was not safe for appellant to do so due to his neck pain and facial numbness. He noted that he told C.C. that he was doing what was best, but C.C. responded that his best was not enough and that appellant had to pick up his work pace.

During the hearing held on August 6, 2020 appellant testified that his shop steward filed a grievance against the employing establishment on his behalf, but that he did not "get any result."

By decision dated October 21, 2020, OWCP's hearing representative affirmed the April 23, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁷ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁸

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion

⁶ *Supra* note 2.

⁷ A.J., Docket No. 18-1116 (issued January 23, 2019); Gary J. Watling, 52 ECAB 278 (2001).

⁸ 20 C.F.R. § 10.115(e); M.K., Docket No. 18-1623 (issued April 10, 2019); see T.O., Docket No. 18-1012 (issued October 29, 2018); see Michael E. Smith, 50 ECAB 313 (1999).

evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.⁹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.¹⁰ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment, or to hold a particular position.¹¹ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty on August 2, 2017, as alleged.

Appellant alleged that he sustained an emotional condition due to various incidents and conditions at work on August 2, 2017. Therefore, the Board must initially review whether these alleged incidents and conditions are compensable factors under the terms of FECA. The Board notes that appellant's claim does not directly relate to his regular or specially assigned duties under *Lillian Cutler*.¹³ Rather, appellant primarily claimed that C.C., his immediate supervisor, committed error and abuse with respect to various administrative/personnel matters on August 2, 2017. He also claimed that C.C. subjected him to harassment and discrimination on that date.

With respect to administrative or personnel matters, appellant claimed that C.C. committed wrongdoing on August 2, 2017 by mishandling his work assignments and wrongly scrutinizing and criticizing his actions and demeanor. He asserted that C.C. improperly instructed him to deliver mail on street route 19 despite the fact that he had advised C.C. that he was not feeling well. Appellant asserted that, while he was on his lunch break, C.C. asked to speak to him after lunch, causing him to feel nervous and stressed that he had done something wrong. He claimed

⁹ See *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹⁰ *Lillian Cutler*, 28 ECAB 125 (1976).

¹¹ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹² *Id.*

¹³ See *Lillian Cutler*, *supra* note 10.

that, after lunch, he spoke with C.C. who informed appellant that he thought appellant was emotionally unstable.

The Board has held that administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹⁴ However, the Board has also held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.¹⁵ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹⁶

The Board finds that appellant has not submitted sufficient evidence to establish the above-noted claims about administrative/personnel matters. There is no indication that he obtained a final determination from an administrative body showing that management committed error or abuse.¹⁷ Although appellant expressed dissatisfaction with the actions of C.C., the Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.¹⁸ The Board notes that C.C. explained that he only gave legitimate instructions to appellant on August 2, 2017 as part of his right to supervise him. Appellant has not substantiated error or abuse committed by C.C. in the above-noted matters and, therefore, he has not established a compensable employment factor with respect to administrative or personnel matters.

Appellant also alleged that C.C. committed harassment and discrimination on August 2, 2017. He claimed that, while he was casing mail, C.C. came and stood behind him to observe his work, which made him very uncomfortable, nervous, and stressed. Appellant asserted that C.C. unreasonably attempted to rush him into driving his postal vehicle on the streets when it was not safe for him to do so because of his neck pain and facial numbness. He indicated that he told C.C. that he was doing was best, but alleged that C.C. responded that his best was not enough and that he had to pick up his work pace.

To the extent that, disputes and incidents alleged as constituting harassment are established as occurring and arising from an employee's performance of his or her regular duties, these could constitute employment factors.¹⁹ The Board has held that unfounded perceptions of harassment

¹⁴ *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁵ *M.S.*, Docket No. 19-1589 (issued October 7, 2020); *William H. Fortner*, 49 ECAB 324 (1998).

¹⁶ *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁷ Appellant indicated that he had filed a grievance against the employing establishment regarding the events of August 2, 2017, but there is no final decision in the case record showing that error and abuse actually occurred. *See M.R.*, Docket No. 18-0304 (issued November 13, 2018).

¹⁸ *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

¹⁹ *D.B.*, Docket No. 18-1025 (issued January 23, 2019); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

do not constitute an employment factor.²⁰ Mere perceptions are not compensable under FECA and harassment can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment actually occurred.²¹

Appellant, however, did not submit corroborative evidence in support of his allegations regarding harassment and discrimination. He did not submit witness statements or other documentary evidence demonstrating that the alleged harassment and discrimination occurred as alleged.²² Appellant has not established that the claimed actions and statements of C.C. rose to the level of harassment or discrimination.²³ He did not submit the final findings of any complaint or grievance made with respect to these matters, such as an Equal Employment Opportunity Commission complaint or a grievance filed with the employing establishment. Therefore, appellant has not established a compensable employment factor with respect to the claimed harassment and discrimination.

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.²⁴

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty on August 2, 2017, as alleged.

²⁰ See *F.K.*, Docket No. 17-0179 (issued July 11, 2017).

²¹ See *id.*

²² See *B.S.*, Docket No. 19-0378 (issued July 10, 2018).

²³ *L.C.*, Docket No. 20-0461 (issued June 2, 2021); see generally *C.T.*, Docket No. 08-2160 (issued May 7, 2009) (finding that some statements may be considered abusive and constitute a compensable factor of employment, but that not every statement uttered in the workplace will be covered by FECA).

²⁴ See *B.O.*, Docket No. 17-1986 (issued January 18, 2019) (finding that it is not necessary to consider the medical evidence of record if a claimant has not established any compensable employment factors). See also *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board